

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

KENNETH BURNS,)	
Petitioner,)	Civil Action No. 18-129 Erie
)	
v.)	
)	
SUPT. MARK CAPOZZA, <u>et. al.</u> ,)	
Respondents.)	

MEMORANDUM

Pending before the Court is a petition for a writ of habeas corpus filed by Kenneth Burns pursuant to 28 U.S.C. § 2254. In September 2005, he was tried in the Court of Common Pleas of Crawford County at criminal docket number CP-20-CR-278-2005 and a jury found him guilty of indecent assault, statutory sexual assault, endangering the welfare of a child, and corruption of minors. On May 10, 2006, the Common Pleas Court sentenced him to an aggregate term of 64-156 months' imprisonment.

In December 2014, Burns filed with this Court a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in which he challenged his May 10, 2006, judgment of sentence. That case was docketed as Burns v. Attorney General, et al., No. 1:14-cv-300 (W.D. Pa.) and the Court dismissed Burns' claims with prejudice. See ECF Nos. 18 and 19 in Burns, No. 1:14-cv-300. Burns did not appeal that decision.

Now pending before this Court is a second petition for a writ of habeas corpus filed by Burns in which he once again challenges the May 10, 2006, judgment of sentence imposed by the Court of Common Pleas of Crawford County at criminal docket number CP-20-CR-278-2005. The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), codified in relevant part at 28 U.S.C. § 2244(b), mandates that before a state prisoner may file a second or

successive habeas corpus petition challenging a judgment of sentence that he previously challenged in a federal habeas action, he must first obtain an order from the appropriate court of appeals authorizing the district court to consider the petition. 28 U.S.C. § 2244(b)(3)(A). See, e.g., Magwood v. Patterson, 561 U.S. 320 (2010). See also United States v. Winkelman, 746 F.3d 134, 135 (3d Cir. 2014); In re Pendleton, 732 F.3d 280, 282 (3d Cir. 2013). Once a petitioner moves for authorization to file a second or successive petition, a three-judge panel of the court of appeals must decide within thirty days whether there is a prima facie showing that the application satisfies § 2244's substantive requirements, which are set forth in § 2244(b)(2). See U.S.C. § 2244(b)(3). AEDPA's allocation of "gatekeeping" responsibilities to the courts of appeals has divested district courts of jurisdiction over habeas petitions that are second or successive filings until the appropriate court of appeals gives the petitioner authorization to file it. See, e.g., Burton v. Stewart, 549 U.S. 147 (2007).

A review of the Court of Appeals' docket establishes that Burns did not receive from it authorization to file a second or successive petition. Therefore, the Court dismisses Burns' petition for lack of jurisdiction in accordance Rule 4 of the Rules Governing Section 2254 Cases In the United States District Courts, which provides that federal district courts have a pre-service duty to screen and summarily dismiss habeas petitions that plainly show the petitioner is not entitled to relief. The Court also denies a certificate of appealability because jurists of reason would not find the Court's decision debatable. 28 U.S.C. § 2253; Slack v. McDaniel, 529 U.S. 473, 474 (2000).

Burns may file with the Court of Appeals an application for authorization to file a second or successive petition. If that court grants his application, he can then file another habeas action with this Court at a new docket number.

And appropriate order follows.

BY THE COURT:

Date: June 5, 2018

s/Arthur J. Schwab
Arthur J. Schwab
United States District Court Judge

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